

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgo	Team: Squad #2	CCRB Case #: 202101160	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 02/08/2021 6:00 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 112	18 Mo. SOL 8/8/2022	EO SOL 8/8/2022	
Date/Time CV Reported Mon, 02/08/2021 7:26 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/22/2021 11:34 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Kleinman	16331	944097	112 PCT
2. POM Donald Leblanc	03223	925589	112 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Izhar Hussain	23050	962490	112 PCT
2. POM Thomas Yoo	14241	963815	112 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Donald Leblanc	Abuse: Police Officer Donald Leblanc threatened to remove § 87(2)(b) to the hospital.	§ 87(2)(b)
B.POM Donald Leblanc	Abuse: Police Officer Donald Leblanc threatened to issue a summons to § 87(2)(b)	§ 87(2)(b)
C.POM Jason Kleinman	Abuse: Police Officer Jason Kleinman threatened to issue a summons to § 87(2)(b)	§ 87(2)(b)
D.POM Donald Leblanc	Abuse: Police Officer Donald Leblanc threatened to arrest § 87(2)(b)	§ 87(2)(b)
E.POM Donald Leblanc	Discourtesy: Police Officer Donald Leblanc spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F.POM Donald Leblanc	Off. Language: Police Officer Donald Leblanc made offensive remarks to § 87(2)(b)	§ 87(2)(b)
G.POM Donald Leblanc	Abuse: Police Officer Donald Leblanc took a photograph of § 87(2)(b)	§ 87(2)(b)
H.POM Donald Leblanc	Discourtesy: Police Officer Donald Leblanc acted discourteously toward § 87(2)(b)	§ 87(2)(b)
I.POM Donald Leblanc	Untruthful Stmt.: Police Officer Donald Leblanc provided a false official statement to the CCRB.	§ 87(2)(b)

Case Summary

On February 8, 2021, § 87(2)(b) filed this complaint with IAB via telephone. The complaint was forwarded to the CCRB, where it was received on February 22, 2021.

On February 8, 2021, at approximately 6:00 p.m., § 87(2)(b) was at a radiology clinic at § 87(2)(b) in Queens and had a dispute with the staff over her refusal to wear a mask or leave. The staff called 911 and Police Officer Donald Leblanc and Police Officer Jason Kleinman, both of the 112th Precinct, and later Police Officer Izhar Hussain and Police Officer Thomas Yoo, also of the 112th Precinct, responded to the location. During their interaction, Police Officer Leblanc threatened to remove § 87(2)(b) to the hospital (**Allegation A: Abuse of Authority – Threat re: removal to hospital** – § 87(2)(g)). Police Officer Leblanc and Police Officer Kleinman both threatened to issue summonses to § 87(2)(b) (**Allegation B: Abuse of Authority – Threat of summons** – § 87(2)(g)) and **Allegation C: Abuse of Authority – Threat of summons** – § 87(2)(g)). Police Officer Leblanc threatened to arrest § 87(2)(b) (**Allegation D: Abuse of Authority – Threat of arrest** – § 87(2)(g)). Police Officer Leblanc used discourteous and offensive language towards § 87(2)(b) (**Allegation E: Discourtesy – Word** – § 87(2)(g)) and **Allegation F: Offensive Language – Other** – § 87(2)(g)). Police Officer Leblanc took a photograph of § 87(2)(b) (**Allegation G: Abuse of Authority – Photography/ Videography** – § 87(2)(g)) and sent it via text message to someone (**Allegation H: Discourtesy – Action** – § 87(2)(g)). Eventually, § 87(2)(b) left the location.

Furthermore, Police Officer Leblanc made a false official statement to the CCRB during his interview on September 14, 2021 (**Allegation I: Untruthful Statement – False Official Statement** – § 87(2)(g)).

Body-worn camera (BWC) footage from the BWCs of Police Officer Kleinman, Police Officer Leblanc, Police Officer Hussain, and Police Officer Yoo is linked to IAs #57-60 (Board Review 01-04) and summarized in IA #62 (Board Review 05).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Donald Leblanc threatened to remove § 87(2)(b) to the hospital.

§ 87(2)(b) was interviewed by telephone on March 3, 2021, in Russian with a Russian interpreter (Board Review 06). Police Officer Leblanc was interviewed at the CCRB on September 14, 2021 (Board Review 07). Police Officer Kleinman was on medical leave and could not be interviewed (Board Review 08).

It is undisputed that § 87(2)(b) was involved in a dispute with staff at the radiology clinic after she refused to wear a mask and then refused to leave when asked to do so. The staff called 911 and reported that § 87(2)(b) was refusing to wear a mask or leave and was “irate” and yelling and screaming. They noted that her behavior had led to them evacuating all of the other patients in the clinic (Board Review 19).

BWC footage from Police Officer Leblanc’s BWC (Board Review 02), at timestamp 2:09, captures Police Officer Leblanc and Police Officer Kleinman telling § 87(2)(b) that the staff of the clinic want her to leave and that she has to leave. § 87(2)(b) says several times that she cannot

stand on the street. Police Officer Leblanc tells § 87(2)(b) “Ok, well, then we’re going to get an ambulance here to take you away.” At 2:40, § 87(2)(b) mentions papers that she has from her doctor, which she previously tried to show to Police Officer Leblanc. Police Officer Leblanc tells Police Officer Kleinman, “Let’s call an ambulance and she’s going to psych.” He then tells § 87(2)(b) that she will go to have a “psychological evaluation.”

§ 87(2)(b) did not mention a discussion of her potential removal to the hospital in any of her statements to the CCRB. She, however, mentioned that her spine is made of metal, which causes her a lot of intense pain and makes her unable to sit, stand or walk for long periods of time, and that at the time of the incident she had a doctor’s note to this effect. She stated that, during the incident she explained this to the officers and attempted to show them the doctor’s note but did not get a chance to do so.

Police Officer Leblanc testified that a nurse who worked at the clinic told him that § 87(2)(b) had been at the clinic for an “extended period of time,” between 2-4 hours, and was no longer welcome there. When he spoke to her, § 87(2)(b) refused to get up from her chair or leave the clinic and came up with excuses for why she would not leave, such as that her back hurt and she was waiting for a ride. Police Officer Leblanc asked § 87(2)(b) if she needed medical attention and said that he would call an ambulance to take her to the hospital, since § 87(2)(b) mentioned her back hurting and that she could not stand. Police Officer Leblanc did not recall discussing the possibility of § 87(2)(b) being removed to the hospital against her will with her. He believed that “maybe at one point” § 87(2)(b) seemed to be becoming an “emotionally disturbed person” (EDP), as she was not making sense and seemed not to be “of sound mind” given that she “wasn’t thinking logically” when told that clinic staff wanted her to leave. § 87(2)(b) remained in the clinic for hours despite being asked to leave by staff and later by police. Police Officer Leblanc believed that § 87(2)(b) may have become a danger to herself or others as she seemed to try to make Police Officer Leblanc “flinch” by making a movement as if she were going to strike him. Police Officer Leblanc had not decided how § 87(2)(b) posed a danger to herself. Police Officer Leblanc noted that he could only refer or ask for an ambulance and his supervisor to come, and that EMTs and his supervisor would make the decision of whether to remove § 87(2)(b). Police Officer Leblanc did not recall whether an ambulance was ever called but did not believe that one was. He recalled asking § 87(2)(b) if she needed medical attention related to her physical condition but was unsure whether he asked her if she needed medical attention related to her potential status as an “EDP.” After being shown footage from his own BWC (Board Review 02) from timestamp 2:39, in which he tells § 87(2)(b) that the officers will have her psychologically evaluated, Police Officer Leblanc stated that this was after the point when the officers offered § 87(2)(b) an ambulance for her physical complaints and that § 87(2)(b) was not listening to anything that the officers were saying and was not leaving despite being asked to. Police Officer Leblanc did not have an independent recollection of why he ultimately decided not to have § 87(2)(b) psychologically evaluated.

Patrol Guide Procedure 216-01 instructs officers to render reasonable aid to the sick or injured person and to request an ambulance or doctor to the scene if necessary. Officers should then cooperate with ambulance personnel in every reasonable manner (Board Review 10).

Patrol Guide Procedure 221-13 instructs officers to have an emotionally disturbed person, defined as a person who appears mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others, removed to a hospital in an ambulance (Board Review 11).

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Donald Leblanc threatened to issue a summons to § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Jason Kleinman threatened to issue a summons to § 87(2)(b)

§ 87(2)(b) testified that Police Officer Leblanc threatened to issue her a summons or fine her if she did not leave the clinic. She did not mention Police Officer Kleinman also threatening to issue her a summons.

Police Officer Leblanc testified that he, Police Officer Kleinman, and § 87(2)(b) discussed the possibility of § 87(2)(b) receiving a summons. Police Officer Leblanc did not want to arrest § 87(2)(b) as she is an older woman who may have been of unsound mind. Police Officer Leblanc believed that issuing a summons, or a discussion of issuing a summons, could impel § 87(2)(b) to leave the location, possibly more than the possibility of an arrest.

BWC footage captured by Police Officer Kleinman's BWC (Board Review 01) shows a member of the clinic staff at approximately timestamp 1:06 explain to Police Officer Kleinman that § 87(2)(b) would not leave and yelled at staff when she was asked to put her mask on or leave the building. Police Officer Leblanc's BWC (Board Review 02) shows both officers telling § 87(2)(b) that the staff want her to leave and that she must leave. § 87(2)(b) says that she cannot stand on the street. At approximately 4:39, a staff member states that § 87(2)(b) was waiting for an hour for a car. A staff member says that § 87(2)(b) cannot wait in the clinic. At timestamp 5:30, both officers tell § 87(2)(b) that she will receive a summons. Police Officer Kleinman states that it will be for trespassing. § 87(2)(b) does not leave the clinic until approximately timestamp 13:12.

New York State Penal Law § 140.00 states that a person who enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless they defy a lawful order not to enter or remain, personally communicated to them by the owner of the premises or another authorized person. New York State Penal Law § 140.05 states that a person is guilty of trespass when they knowingly enter or remain unlawfully in or upon premises (Board Review 09).

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Allegation (D) Abuse of Authority: Police Officer Donald Leblanc threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that Police Officer Leblanc told her, "If you don't get out now, I will place you in handcuffs and bring you to jail."

Police Officer Leblanc testified that he told § 87(2)(b) that if she would not leave, she would be trespassing. He told her that the officers would place her under arrest, since she was committing a violation in the presence of a police officer. He believed that he said something like, “Ma’am, we’re going to arrest you if you don’t leave.” § 87(2)(b) could have been arrested for trespassing; Police Officer Leblanc did not recall anything else that § 87(2)(b) could have been arrested for

BWC footage from Police Officer Leblanc’s BWC shows that, at approximately timestamp 5:30, both officers tell § 87(2)(b) that she will get a summons and ask her for her ID. § 87(2)(b) refuses to provide her ID. At 5:52, Police Officer Leblanc tells § 87(2)(b) that she must provide her ID or she will be arrested. § 87(2)(b) asks what she would be arrested for, and Police Officer Leblanc says, “Trespassing.” Police Officer Kleinman continues trying to explain to § 87(2)(b) that she is trespassing and has to leave, while § 87(2)(b) continues insisting that she cannot wait on the street.

As noted above, New York State Penal Law § 140.00 and § 140.05 state that a person who enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless they defy a lawful order not to enter or remain, personally communicated to them by the owner of the premises or another authorized person. If a person knowingly enters or remains unlawfully in or upon premises, they are guilty of trespass (Board Review 09).

Patrol Guide Procedure 209-09 instructs officers issuing criminal court summonses to remove a violator to the command for investigation if the identity of the violator is in doubt (Board Review 12).

As noted above, § 87(2)(b) was guilty of trespass during her interaction with Police Officer Kleinman and Police Officer Leblanc. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Discourtesy: Police Officer Donald Leblanc spoke discourteously to § 87(2)(b).

Allegation (F) Offensive Language: Police Officer Donald Leblanc made offensive remarks to § 87(2)(b)

Police Officer Leblanc’s BWC (Board Review 02) shows, at 3:45, Police Officer Leblanc saying, “Am I dealing with an insane person here?” At approximately 4:04, Police Officer Leblanc appears to believe that § 87(2)(b) is trying to strike him, and asks her, “What are you, are you insane? Are you literally insane?” § 87(2)(b) responds that she does not understand him. Police Officer Leblanc says, “Are you crazy?” § 87(2)(b) says that she is not and that she is sick. At approximately timestamp 6:39, § 87(2)(b) and the officers discuss calling § 87(2)(b) a car. § 87(2)(b) says that she has already called for one, and Police Officer Leblanc says, “You’re a liar.” § 87(2)(b) says again that she called, and Police Officer Leblanc calls her a liar again. At 7:19, Police Officer Leblanc says, “Well, you, you, are insane.”

§ 87(2)(b) did not mention specific discourteous language that Police Officer Leblanc used

towards her. She testified that he was “very annoyed” and “fought” and argued with her.

Police Officer Leblanc testified, as noted above, that at some point during the incident, § 87(2)(b) seemed to be of unsound mind. § 87(2)(b) seemed to try to make Police Officer Leblanc “flinch” as if she were going to strike him. Police Officer Leblanc “wasn’t concerned” by this and did not consider § 87(2)(b) movement a significant threat to himself, as she is “an elderly woman” and he is a comparatively younger, stronger man. After § 87(2)(b) made her movement towards Police Officer Leblanc, Police Officer Leblanc asked § 87(2)(b) if she was insane and what she was doing. He initially did not recall saying, “Am I dealing with an insane person here?” to § 87(2)(b). When asked whether he said, “What are you, are you insane? Are you literally insane?” to § 87(2)(b), Police Officer Leblanc stated that it was possible but that he had no independent recollection of saying this. His comments about § 87(2)(b) mental state may have been in reference to § 87(2)(b) movement as if she were going to strike him. Police Officer Leblanc believed that asking someone if they are insane is “a valid question” when someone attempts to “make a strike at a police officer in uniform.”

Patrol Guide Procedure 200-02 instructs officers to maintain a higher standard of integrity than is generally expected of others. It further requires officers to respect the dignity of each individual and render services with courtesy and civility (Board Review 18)

DAO-DCT Case #2018-18951 establishes that there are certain situations where profane remarks made during a stressful or chaotic situation would not constitute misconduct (Board Review 13).

Patrol Guide Procedure 203-10 prohibits the use of discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability (Board Review 22). Administrative Guide 304-06 likewise prohibits the use of discourteous or disrespectful remarks regarding another person’s age ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability (Board Review 23). There are no stipulated exceptions to these prohibitions.

While a “stressful” or “chaotic” situation may excuse certain instances of discourteous language, Police Officer Leblanc noted in his testimony that he did not consider § 87(2)(b) to pose a significant threat to himself due to her age and size. § 87(2)(b) was also outnumbered by officers and clinic staff for the entirety of the incident. Furthermore, Police Officer Leblanc’s repeated questions to § 87(2)(b) about whether she was “insane” or “crazy” appeared more intended to belittle § 87(2)(b) § 87(2)(g) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Donald Leblanc took a photograph of § 87(2)(b)

Allegation (H) Discourtesy: Police Officer Donald Leblanc acted discourteously toward § 87(2)(b)

BWC footage from Police Officer Kleinman’s BWC (Board Review 01) at timestamp 12:16 shows Police Officer Leblanc holding his phone by his waist, tilting it up to point the camera at § 87(2)(b). The phone’s screen then shows a photo of § 87(2)(b) who is seated directly across from where Police Officer Leblanc is standing, being captured on the phone. The phone

then switches to a text messaging application, and the photo that has just been taken appears in the conversation thread of a text message conversation on the phone. The BWC then pans to § 87(2)(b) and shows her in the same position that she was in in the photo taken by Police Officer Leblanc (See IA # 107 (Board Review 20) for a clip of the video with the image cropped and zoomed in to show a closer image of Police Officer Leblanc's phone's screen during this period).

§ 87(2)(b) did not mention Police Officer Leblanc taking a photograph of her.

Police Officer Leblanc denied ever taking a photograph of § 87(2)(b). When shown Police Officer Kleinman's BWC video, described above, he stated that he was not sure what he was doing with his phone but that he was "looking at something." Police Officer Leblanc could not describe what was happening at this point in the video. The video did not refresh Police Officer Leblanc's recollection about any photographs he took during the incident. Police Officer Leblanc was unsure whether the phone he was holding in the BWC footage was his department phone or his personal phone, as both phones are iPhones of the same size and color. Police Officer Leblanc did not recall any reason why a photograph would need to be taken of § 87(2)(b) during this incident.

Patrol Guide Procedure 203-06 prohibits officers from using any personal electronic or digital device, including a cell phone or camera, to take photographs during any police encounter. Officers are only allowed to record encounters when prior supervisory authority is obtained and when authorized department technology is used. If an authorized recording device is used, any evidence such as photos or videos must be printed and/or downloaded to a disc and invoiced as evidence in accordance with the Patrol Guide. This procedure also prohibits officers from transmitting in any form or distributing any official department recorded media or recorded media coming into possession of the department as evidence or for investigative purposes except as authorized for official department business (Board Review 14).

§ 87(2)(g)

Police Officer Leblanc was unable to determine whether the phone he was using in the video was his personal phone or his department phone. If the phone was his personal phone, he was prohibited by the Patrol Guide from taking photographs with it during a police encounter. If the phone was his department phone, Police Officer Leblanc did not follow the Patrol Guide procedure in terms of preserving evidence. § 87(2)(g)

if Police Officer Leblanc took the photograph legitimately, he did not provide a reason why he sent the photograph to someone, as he is captured doing in Police Officer Kleinman's BWC, § 87(2)(g)

Patrol Guide Procedure 200-02 instructs officers to maintain a higher standard of integrity than is generally expected of others. It further requires officers to respect the dignity of each individual and render services with courtesy and civility (Board Review 18)

§ 87(2)(g)

Allegation (I) Untruthful Statement: Police Officer Donald Leblanc provided a false official

statement to the CCRB.

Police Officer Leblanc denied ever taking a photograph of § 87(2)(b). When shown the BWC footage that captures him taking a picture of § 87(2)(b) and sending it to an unknown party via text message (Board Review 01 and Board Review 20), Police Officer Leblanc testified that he could not describe what was happening at that point in the video but that he was “looking at something.”

Administrative Guide Procedure 304-10 prohibits officers from intentionally making a false official Statement in a CCRB interview, which is a statement that the officer knows to be untrue that is material to the outcome of an investigation (Board Review 21).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 15).
- Police Officer Leblanc has been a member of service for 21 years and has been a subject in six additional CCRB complaints and 15 allegations, none of which were substantiated.

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- Police Officer Kleinman has been a member of service for 14 years and has been a subject in seven additional CCRB complaints and 15 allegations, none of which were substantiated.

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Mediation, Civil, and Criminal Histories

- § 87(2)(b) accepted mediation. However, due to an Agency moratorium on mediations, this case was investigated.
- As of October 28, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 16).

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 2

Investigator:	<u>Rachel Murgo</u>	<u>Inv. Rachel Murgo</u>	<u>9 June 2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Alexander Opoku-Agyemang</u>	<u>IM Alexander Opoku-Agyemang</u>	<u>6/9/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date